

EXHIBIT 3

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 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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AMERICAN BROADCASTING
 COMPANIES, INC., et al.,

Plaintiffs,

v.

12 Civ. 1540 AJN

AEREO, INC.,

Defendant.

----- x

March 13, 2012
 3:43 p.m.

Before:

HON. ALISON J. NATHAN,

District Judge

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(In open court)

(Case called)

THE COURT: Please be seated.

As you say, there is a parallel matter with a motion to consolidate pending in front of Judge Marrero. He has not acted on that yet. I have attempted to contact him today and was unable to reach him. He has got some family matters to attend to, but I will see what he wants to do with that.

I don't know how that impacts what we need to do today, which I gather is to set a schedule, but why don't I hear from you, Mr. Keller. To tell you what I have before me, I reviewed the complaint, and then I have a letter from -- am I saying it right, AEREO?

And then I have an answer as of today which I have briefly seen and a letter indicating AEREO's views as to an appropriate schedule, seeking to move to final disposition. But, Mr. Keller, I don't believe I have your views on specific process going forward. So why don't you start situating me any way that you like and then turning to the process.

11 judgment or not. We don't know that yet. We haven't had the
 12 discovery. Maybe they're right and there isn't much, but I'm
 13 not sure about that.

14 What we do know is that the fact that a defendant
 15 wants summary judgment pretty quickly is not a defense or
 16 reason not to grant an early preliminary injunction hearing.
 17 We have a right to seek such a hearing. We have made the case
 18 that, based on cases from this courthouse, irreparable harm
 19 flows if, in fact, they are infringing not as a matter of
 20 presumption, as a matter of fact that we can prove, that is
 21 what Judge Buchwald ruled in her IVI, case and we are prepared
 22 to build that record in the next six to eight weeks.

23 They would like, obviously, to drag it out. I don't
 24 mean that pejoratively; I mean that factually. They're
 25 thinking about four months out. We can't wait that long.

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1 By the way, your Honor, the proposal that they made to
 2 you --

3 THE COURT: Can you just flesh out a little bit for me
 4 why you can't?

5 MR. KELLER: Because irreparable harm happens every
 6 day our rights are infringed, and they're going live, as we
 7 understand it, in the New York market tomorrow, and according
 8 to the press reports -- and we'll get discovery on this to find
 9 out if it is so -- New York is still itself just a test market.
 10 They plan to go nationally very quickly according to Mr.
 11 Diller, one of their investors, 75 to 100 markets, and we are
 12 not clear on the time-frame. We want to know about that, too.

13 New York is still a test market. We are not waiting
 14 any longer. They think they can go live. They say that
 15 they've been out there doing this for some time. Your Honor,
 16 it is what is known as a beta test. It is an experimental
 17 group. This is even more narrow. It was an invitation-only
 18 beta test. It wasn't widely available according to what they
 19 said about their own service. You had to be invited in some
 20 way to be part of the beta group.

21 It was the most preliminary of experiments. Now they
 22 think they can go live. We're here today to say you can't do
 23 it without causing us irreparable injury, and we want to enjoin
 24 it early, as early as we possibly can.

25 The summary judgment procedure that they've outlined

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1 they've cited, that is what happened to Cablevision. They're
 2 exactly right, that is what happened to Cablevision. What they
 3 didn't tell you in their letter is that Cablevision agreed not
 4 to launch its service while the courts had a chance to vet it
 5 for whether it was copyright infringement or not.

6 The whole process that they've said is eminently
 7 reasonable might be eminently reasonable if they didn't launch
 8 tomorrow. But we have asked them would you not launch? That
 9 is the first thing we asked. Then we can come up with an
 10 agreed-upon schedule like Cablevision. They said we are not
 11 waiting, we are ready to go. That is why we need preliminary
 12 injunctive relief and we need it now.

13 THE COURT: Thank you, Mr. Keller. Let me hear from
 14 Mr. Hosp.

15 MR. HOSP: Yes, your Honor, this is Mr. Englander.

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16 MR. ENGLANDER: I am going to speak, your Honor, but
17 Mr. Hosp may need to straighten me out from time to time.
18 As we indicated in our letter, your Honor, we're
19 interested in resolving this as expeditiously and efficiently
20 as we can. We are a small start-up. We have been accused of
21 copyright infringement in connection with what we do. We need
22 to have that resolved.
23 We think the preliminary injunction process being
24 proposed to you will actually delay things and get in the way
25 of that and that is why we have indicated an objection. It is
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1 possible we can work something out so that that is not the
2 case.
3 THE COURT: Is it right that there is no possibility
4 of an agreed-upon delay of launch to work out a schedule?
5 MR. ENGLANDER: That's correct, your Honor.
6 THE COURT: Okay.
7 THE COURT: I thought maybe if I asked, it would be
8 different.
9 MR. ENGLANDER: No, your Honor. Maybe I should
10 address this first.
11 THE COURT: Go right ahead.
12 MR. ENGLANDER: There are a number, as Mr. Keller
13 said. Maybe I should address this first. They have delayed
14 the opportunity to get this resolved on a reasonable schedule
15 for at least nine months, your Honor. There is no reason that
16 they could not have come to court and sought a declaratory
17 judgment. We did everything but give blueprints, okay?
18 That is perhaps an exaggeration, but we have been very
19 transparent.
20 THE COURT: I haven't looked at the IVI case, but can
21 you respond to the point?
22 MR. ENGLANDER: It is a very, very different system
23 and set of ideas and concepts. What we are doing is providing
24 a system that a consumer can use to do nothing different than a
25 consumer has every right to do right now. A consumer right now
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1 can get over-the-air broadcasting by having an antenna on the
2 roof of their home. They can make a copy of that, unique copy
3 for their own personal use and they can play it back to
4 themselves.
5 All we are doing is remotely locating an antenna.
6 They're very very small antennas.
7 THE COURT: The size of a dime?
8 MR. ENGLANDER: Exactly. This is one of them and
9 there will be thousands of them. The consumer will tune in to
10 their own antenna. In other words, they will sit at home, go
11 onto our system using our system and think of it as a machine
12 using our system tune their antenna, make a copy, their own
13 unique copy of that television program and then play that back,
14 that unique copy that is theirs back to themselves.
15 Your Honor, two cases conclude that that is entirely
16 lawful. One is the Cablevision decision from the Second
17 Circuit, four years' old, that dealt with the remote storage
18 DVR being offered by Cablevision, and I think other is Sony.
19 Sony came from the U.S. Supreme Court which says that a
20 consumer has the right to get over-the-air broadcasts, make a

21 copy for their own personal use and play it back to themselves.
 22 So that is what we have here. We have told the
 23 industry, and had specific meetings with many of Mr. Keller's
 24 clients in which over the last several months we have explained
 25 what we're doing. If they needed relief and they were really

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1 concerned about it on a preliminary basis, they could have
 2 sought a declaratory judgment at any time. They did not. They
 3 waited until just before the launch, and now they tell you it
 4 is very urgent they get decided.

5 THE COURT: Isn't that an argument you could
 6 potentially make counter to their irreparable harm arguments?
 7 Why would that preclude them from bringing a preliminary
 8 injunction motion?

9 MR. ENGLANDER: The answer is it doesn't. The concern
 10 we have is simply somehow they seem to be suggesting to you
 11 that they're going to divide up discovery so that what we'll
 12 have is one process where they seek a preliminary injunction
 13 and then the case will still be out there not resolved and
 14 hanging over the head of this start-up company.

15 If we can manufacture a schedule so that we can also
 16 have in front of you the summary judgment motions that we
 17 believe are appropriate on a record that they do not claim is
 18 incomplete -- the thing we don't want to have happen is we go
 19 through a process where they move for preliminary injunction,
 20 we move for summary judgment, and they say 56 (e), we are not
 21 ready yet to decide this.

22 They haven't given us all the facts. We are going to
 23 do discovery, get the complete discovery done that needs to be
 24 done so your Honor has in front of you the full facts. We
 25 think this case is a case, primarily a case that gets decided

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1 on the law. We have to know how our system works. That is
 2 important.

3 There may be some other facts we need to do discovery
 4 of from them but we can do that rapidly and then have before
 5 your Honor all you need to decide a motion for summary
 6 judgment, and if they choose to file a motion for preliminary
 7 injunction, a motion for preliminary injunction. We need to
 8 work on a schedule that allows us to come before you.

9 In the Cablevision case which we were involved in --
 10 THE COURT: And you think you can do that, that can be
 11 done in, accomplished in four months, a hearing in four months?

12 MR. ENGLANDER: We hashed out a schedule in which it
 13 was basically briefing completed in four months. We may be
 14 able to do it faster with cooperation from the parties, I
 15 believe we could. I am listening to Mr. Keller saying he is
 16 going to have four to six weeks of discovery and a hearing in
 17 eight weeks, and I am wondering where the briefing comes in.
 18 We haven't even seen their motion yet.

19 Their schedule, it seems to me, I don't quite get it.
 20 Are they saying they're going to file their motion before
 21 discovery is complete or are we going to be, after 9 months are
 22 they going to give us four days to respond to a preliminary
 23 injunction motion?

24 We have, with respect to preliminary injunction
 25 motion, we have a serious issue about irreparable harm that